

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

JOYCE TOTH, an individual, )  
vs. )  
Plaintiffs, ) Case No. 1:23-cv-11043  
EVERLY WELL, INC. and EVERLY )  
HEALTH, INC., )  
Defendants. )  
\_\_\_\_\_  
)

**AFFIDAVIT OF ALICIA HERBER IN SUPPORT OF EVERLYWELL'S MOTION TO  
COMPEL OR ALTERNATIVELY TO DISMISS PLAINTIFF'S COMPLAINT**

I, Alicia Herber, being under oath do hereby depose and say as follows:

1. I am the Associate Creative Director for Defendant Everly Health, Inc., the parent company of Defendant Everly Well, Inc. (together with Everly Health, Inc., "Everlywell"). The matters set forth herein are based on my personal knowledge and/or my review of Everlywell's regularly maintained business records. If called as a witness, I could and would competently testify to the matters set forth below.

2. I joined Everlywell in May 2019. As Associate Creative Director, I am responsible for the design of the packaging for Everlywell's Food Sensitivity Test and Food Sensitivity Comprehensive Test.

3. Attached as **Exhibit 1** are true and correct images of the front and back of the Food Sensitivity Test box as it currently appears.

4. Attached as **Exhibit 2** are true and correct images of the front and back of the Food Sensitivity Comprehensive Test box as it currently appears.

5. The current packaging design for both Everlywell's Food Sensitivity Test and Food Sensitivity Comprehensive Test was redesigned in June 2021. The packaging design for both products, including all headings, text, and bolding, has not changed since June 2021. Consequently, at all times since then the packaging for both the Food Sensitivity Test and Food Sensitivity Comprehensive Test has stated in bolded text that "**Purchase, registration, and use are subject to agreeing to the Everlywell User Agreement, which can be read at [everlywell.com/terms](http://everlywell.com/terms)"**.

6. Page 19 of Ms. Toth's Complaint contains an image of the front of a Food Sensitivity Test (the first of the three images depicted in Paragraph 53) that differs from the images in Exhibits 1 and 2. That image in Ms. Toth's Complaint is of the packaging as it appeared prior to June 2021.

Signed under the penalty of perjury this 14th day of June, 2023.

DocuSigned by:  
  
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Alicia Herber

# **Exhibit 1**

## Food Sensitivity Test – Front of Box



## Food Sensitivity Test – Back of Box

# Learn your reactivity to 96 common foods that may be causing discomfort

**everlywell**

### HOW IT WORKS



**STEP 1**  
**Collect sample at home**

Follow instructions for easy sample collection.



**STEP 2**  
**Send to a CLIA-certified lab**

A board-certified physician will review your results.



**STEP 3**  
**Receive digital results**

Easy-to-understand results sent to your device in days.



**STEP 4**  
**Take the next steps**

Get resources to guide your health and wellness journey.

### WHAT'S MEASURED

IgG reactivity to 96 foods
Eggs (2)
Seafood (11)
Dairy (5)
Legumes (5)
Grains (10)
Spices (15)
Vegetables (20)
Seeds & Nuts (7)
Meat (5)
Fruits (16)

### SAMPLE COLLECTION



**Finger-prick blood collection**

### Warnings and Limitations

Must be 18+ to complete a test. Our tests are not available in all states. Please see [everlywell.com/states](http://everlywell.com/states) for more information. This test is intended for informational and educational use only. It is not intended to be used for diagnostic purposes. Test requires a blood sample. We work with a physician network to ensure that your test requisition is reviewed and approved by an independent board-certified physician in your state and that your results are reviewed by a physician before you receive them. Purchase, registration, and use are subject to agreeing to the Everlywell User Agreement, which can be read at [everlywell.com/terms](http://everlywell.com/terms).

### PLEASE RECYCLE!

Shipping to lab included

# **Exhibit 2**

## Food Sensitivity Comprehensive Test – Front of Box



## Food Sensitivity Comprehensive Test – Back of Box

# Learn your reactivity to 204 common foods that may be causing discomfort

**everlywell**

### HOW IT WORKS



#### STEP 1 Collect sample at home

Follow instructions for easy sample collection.



#### STEP 2 Send to a CLIA-certified lab

A board-certified physician will review your results.



#### STEP 3 Receive digital results

Easy-to-understand results sent to your device in days.

#### STEP 4 Take the next steps

Get resources to guide your health and wellness journey.

### WHAT'S MEASURED

IgG reactivity to 204 foods			
Eggs (2)	Seafood (25)	Grains (13)	Vegetables (37)
Dairy (15)	Legumes (13)	Fruits (35)	Meat (7)
		Seeds & Nuts (16)	Spices (41)

### SAMPLE COLLECTION



#### Finger-prick blood collection

### Warnings and Limitations

Must be 18+ to complete a test. Our tests are not available in all states. Please see [everlywell.com/states](http://everlywell.com/states) for more information. This test is intended for informational and educational use only. It is not intended to be used for diagnostic purposes. Test requires a blood sample. We work with a physician network to ensure that your test requisition is reviewed and approved by an independent board-certified physician in your state and that your results are reviewed by a physician before you receive them. Purchase, registration, and use are subject to agreeing to the Everlywell User Agreement, which can be read at [everlywell.com/terms](http://everlywell.com/terms).

#### PLEASE RECYCLE!



#### Shipping to lab included